UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/90
23 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity

Report of the Secretary-General

GE.99-16524 (E)

I. INTRODUCTION

1. In its resolution 1999/34, the Commission on Human Rights recalled the report submitted by Mr. Louis Joinet (E/CN.4/Sub.2/1997/20/Rev.1) and the Set of principles for the protection and promotion of human rights through action to combat impunity, annexed to the report, and requested the Secretary-General to again invite States to provide information on any legislative, administrative or other steps they have taken to combat impunity for human rights violations in their territory and to submit a report thereon to the Commission at its fifty-sixth session. The present report, submitted in accordance with the request contained in resolution 1999/34, summarizes replies received from States, intergovernmental organizations and non-governmental organizations.

II. REPLIES

2. In response to the note verbales and letters sent on 15 September 1999, information was received from the Governments of Cuba, Cyprus, Germany, New Zealand, Peru and the United Kingdom of Great Britain and Northern Ireland. Information was also received from the Economic Commission for Latin America and the Caribbean, the International Criminal Tribunal for the Former Yugoslavia, the International Rehabilitation Council for Torture Victims and the International Federation of Surgical Colleges.

3. The Government of Cuba indicated that it would continue in future, in the spirit of the Vienna Declaration and Programme of Action, to work against selectivity in the struggle against impunity. It emphasized the importance of international cooperation to combat impunity, bearing in mind the basic principles laid down in Article 2 of the Charter of the United Nations, underlined the unacceptability of unilateral State action to apply justice extraterritorially, and contended that the "right" of humanitarian intervention was a dubious effort to confer doctrinal legitimacy on what was really an attempt at geo-political domination. States were to be encouraged to adopt administrative, legislative and judicial measures so as to give effect to human rights guarantees and, in this regard, the Government reiterated its determination to enforce responsibility for violations of human rights, which constituted an essential element and a key factor in the definitive establishment of justice and national reconciliation within a State. Moreover, international cooperation in the struggle against impunity was the only possible means to ensure the fair application of justice. The Government stressed that the people of the South required reparation and justice for impunity, neo-colonial wars, the extermination of populations and peoples, the defilement of their economic, cultural and natural heritage by countries of the North, the decapitalization of the developing countries charged with paying external debts and the dumping of toxic waste in their territories, to cite only a few examples.

4. The Government of Cyprus explained the existing administrative, legislative and other measures for combating impunity for human rights violations contained in its laws, in particular Part II of its Constitution which incorporates verbatim pertinent provisions of the European Convention on Human Rights, which Cyprus has ratified. The Constitution imposes on the legislature, the executive and the judiciary a duty to secure its efficient application as regards human rights and fundamental freedoms. It further described the power of the Attorney-General, as an independent officer of the State, to investigate crimes constituting or involving human rights violations. It also drew attention to the possibility of appointing commissions of inquiry in

cases concerning conduct that may involve violations of international human rights standards and explained the role of the Commissioner for Administration, empowered to investigate complaints against the public service or its officials, including the police, the army and the National Guard. The Commissioner is expressly authorized to investigate complaints involving allegations of human rights violations. Finally, the Government underlined that the Constitution safeguards the right of access to justice and described the scope of remedies available to victims of human rights violations.

5. The Government of Germany highlighted the work of the Federal Commissioner for the files of the State Security Service of the former German Democratic Republic, which was to help process and, wherever possible, provide compensation for past serious violations of human rights, including "systematic injustice" meted out by the former GDR to its own citizens. In this regard, the agency focused on the activities of the Ministry of State Security of the GDR, its predecessors and successors. The Federal Commissioner - independent and subject only to law - is elected by the German Bundestag for a period of five years on the proposal of the Federal Government and can be re-elected once. The Federal Commissioner works on the basis of the Act on State Security Service Files of 20 December 1991, which stipulates how the files of the GDR State Security System are to be collated, read, administered and used. The purposes of the Act and the role of the Federal Commissioner are: to grant every individual access to the files kept on him/her by the State Security Service so that he or she is informed as to how the State Security System may have influenced his personal life; to protect the individual from invasions of his personal privacy through misuse of the information gathered about him by the State Security Service; and to facilitate the historical, political and legal processing of the activities of the State Security Service. The Government also detailed the tasks of the Federal Commissioner as regards access to files, rehabilitation and compensation, criminal prosecution, screening of State employees, and research and education.

6. The Government of New Zealand reported that it had surveyed its existing domestic legislation on impunity, and that a large number of civil and political rights to which all persons in New Zealand are entitled are set out in the New Zealand Bill of Rights Act, 1990. These include the rights to life and security of the person, civil and democratic rights, non-discrimination and minority rights, rights of persons searched, arrested and detained, and the right to justice. These rights are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In cases where such rights may be breached by any branch of Government or by any person or body exercising a public function, power or duty, a public law right of damages lies against the Crown. If the breach also constitutes a criminal act, the usual array of criminal sanctions is available. Civil remedies, such as a suit in tort for wrongful detention, may also be available against the wrongdoer. The Human Rights Act, 1993, sets out a wide range of grounds of unlawful discrimination and the areas of public life in which it is unlawful to discriminate on these grounds. These grounds are: sex; marital status; religious belief; ethical belief; colour, race, ethnic or national origin (which includes nationality or citizenship); disability; age; political opinion; employment status; family status; or sexual orientation. A victim of unlawful discrimination, racial or sexual harassment or the incitement of racial disharmony, may bring civil proceedings before the Complaints Review Tribunal (with a right of general appeal to the High Court and then on a point of law to the Court of Appeal). The Tribunal has broad discretion to grant relief, including damages to NZ$ 200,000 and restraining orders (or refer the granting of remedies to the High Court). Many such acts may

also give rise to general civil liability. The Act also provides for criminal offences including the incitement of racial disharmony (with punishment of up to three months' imprisonment or a fine of $7,000) and the refusal of public access to places, vehicles and facilities on unlawful grounds (with punishment of a fine of up to $3,000). In addition, New Zealand has passed the Crimes of Torture Act, 1989, and the Geneva Conventions Act, 1958, which implement its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions of 12 August 1949, as well as Additional Protocol I thereto, respectively. The torture legislation makes an act of torture, whether committed in or outside New Zealand territory, punishable with up to 10 years' imprisonment. The Geneva Convention legislation punishes certain grave breaches of the Conventions and Protocol, wherever committed, with up to 14 years' imprisonment or the punishment for murder, as the case requires. Finally, the Government drew attention to the fact that, in respect of persons suspected of serious human rights violations who are no longer located within its territory, it can make an extradition request of a country where the person is located, provided that New Zealand has an extradition relationship with that country and the violation constitutes a criminal offence punishable in both countries by at least one year of imprisonment.

7. The Government of Peru noted first that impunity is a state in which a crime or wrong is not condemned or punished in respect of the corresponding law breached. In this connection, there are two kinds of impunity: impunity in fact and impunity in law. The first concerns situations where the law provides sanctions but prosecution and punishment may not be effective, for example, through the delinquency of the accused who may have fled or through the impossibility or impracticability of identifying the perpetrator. The second concerns situations where the law does not prescribe sanctions for a breach of law, for example, through pardons. In the sense of paragraph 8 of Commission resolution 1999/34, the most important legal means concern those arising from penal law as provided for in the Peruvian Penal Code (Legislative Decree No. 635) which permit administrative or judicial orders to characterize and sanction acts as crimes, because it is only once criminal acts are determined as such in light of the facts that an omission to prosecute and punish can be observed to generate impunity. In this connection, for example, impunity can arise from the moment at which a person who observes a criminal act fails to denounce it. In such cases, the responsibility of the State is limited by the level of civic responsibility in society. However, education can be used to enhance respect for human rights and the obligation to denounce violations. Naturally, the process of human rights education must be carried out in line with other economic and political factors that enhance key State efforts to combat impunity. The Government emphasized that it was doing all it could to promote social order through the denunciation of illicit acts and the eradication of impunity. In addition to the diversity of crimes contained in the Peruvian Penal Code - the pre-eminent instrument with regard to the eradication of impunity - one must refer also to such mechanisms as the restructured National Tax Supervision Administration which can effectively denounce tax evasion and related crimes and which has improved the Government's efforts at economic restoration. As a consequence of, and parallel with, the Judicial Reform instituted by the present Government was the restructuring of the Office of Control of the Magistracy, which has made an enormous contribution to the safeguarding of the rights of individuals through regular prosecution and administrative justice. Among other State means are those of the Office of Provisional Normalization which has made possible the detection of certain illicit acts which would otherwise have gone unpunished, such as false pension claims or other benefits. Logically, the administrative means available to the Peruvian State discussed above correspond

to a particular legal basis which contemplate the nature, objectives and functions for each measure adopted. The Government drew attention also to its ratification of the Inter-American Convention against Corruption. It observed that the application of norms designed to prevent conflict of interests and ensure the preservation and adequate use of the assigned resources by the competent authorities against acts of corruption must be recognized. This has helped to preserve confidence in the integrity of the public service and administration. Finally, it was necessary to impart instructions to the personnel of public entities in order to ensure that they understand their responsibilities and the ethical rules which govern their activities.

8. The Government of the United Kingdom of Great Britain and Northern Ireland drew attention to the fact that on 30 November 1998, it signed the Rome Statute of the International Criminal Court. The Government indicated that it was currently preparing the domestic legislation necessary to pave the way for ratification of the Rome Statute. In order to ensure that all instances of genocide, crimes against humanity and war crimes which might occur in the territory of the United Kingdom could be punished by domestic courts, this legislation will incorporate into domestic law the offences set out in the Rome Statute.

9. The Economic Commission for Latin America and the Caribbean indicated that within the Caribbean region, a number of issues have arisen concerning claims for compensation arising from the historical experience of slavery and indentureship, the plight of indigenous peoples, and issues relating to nationalization and expropriation carried out by the State.

10. The International Criminal Tribunal for the Former Yugoslavia (ICTFY) - the first international criminal tribunal established since the International Military Tribunals at Nuremberg and Tokyo conducted trials following the end of the Second World War for crimes against peace, war crimes and crimes against humanity - counts as a major step in international efforts against impunity. The Tribunal's Registrar provided documentation on the jurisdiction and operation of the Tribunal, including Basic Documents, the Statute of the ICTFY, the latest version of the Rules of Procedure and Evidence, two Practice Directions relating to the enforcement of sentences handed down by the Tribunal, as well as the annual report of the Secretary-General to the Security Council and the General Assembly.

11. The International Rehabilitation Council for Torture Victims, as part of the Coalition of International NGOs against Torture (CINAT), comprising Amnesty International, the Association for the Prevention of Torture, the Federation of Actions by Christians for the Abolition of Torture, the World Organization against Torture and Redress Trust, held a panel discussion during the 1999 regular session of the Commission on Human Rights on the theme of impunity for serious human rights violations at which CINAT member organizations presented their respective approaches to the problem. The International Rehabilitation Council for Torture Victims emphasized that impunity for torture remains a major obstacle in the rehabilitation of victims of torture, particularly where such impunity creates the impression that the community in which the victim lives implicitly condones the violation.

12. The International Federation of Surgical Colleges observed that the study of the prevention and management of disasters normally focuses on one of three categories: natural disasters, man-made disasters and complex disasters. However, to these categories there ought to be added a fourth: "man-conceived disasters", including genocide, mass deportations, the use of death camps, ethnic cleansing, enforced or involuntary disappearances and other serious violations of human rights and humanitarian law. The International Federation stressed that such disasters were "intentionally conceived" and had to be addressed by the Office of the United Nations High Commissioner for Human Rights and the international community at large in this light.